

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUSTEES OF THE PAVERS AND ROAD
BUILDERS DISTRICT COUNCIL WELFARE,
PENSION, AND ANNUITY FUNDS and THE
TRUSTEES OF THE LOCAL 1010
APPRENTICESHIP, SKILL IMPROVEMENT, AND
TRAINING FUND,

Plaintiffs,

-against-

WESTBURY EQUIPMENT CORP.,

Defendant.

24 CV 4622 (BMC)

**DECLARATION OF
ADRIANNA R. GRANCIO, ESQ.
IN SUPPORT OF PLAINTIFFS'
MOTION FOR
DEFAULT JUDGMENT**

Adrianna R. Grancio, Esq. declares:

1. I am admitted to the Bar of this Court and am a Partner with the law firm of Virginia & Ambinder, LLP (“V&A”), attorneys for Plaintiffs in this action.

2. I submit this declaration in support of Plaintiffs’ Motion for Default Judgment against Defendant Westbury Equipment Corp. (“Westbury” or “Defendant”), commenced on July 1, 2024, pursuant to Fed. R. Civ. P. 55.

3. Subject matter jurisdiction of this action is based upon Section 302 of the Labor Management Relations Act (“LMRA”) of 1947, as amended, 29 U.S.C. § 185, and Sections 502(a) and 515 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1132(a)(3) and 1145. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2). Personal jurisdiction is also based upon 29 U.S.C. §§ 185 and 1132(e)(1).

I. Procedural History

4. Plaintiffs Trustees of the Pavers and Road Builders District Council Welfare, Pension, and Annuity Funds and the Trustees of the Local 1010 Apprenticeship, Skill

Improvement and Training Funds (the “Funds”) commenced this action on July 1, 2024. A true and correct copy of the Complaint is attached hereto as **Exhibit L**.

5. Plaintiffs properly served the Summons and Complaint upon Defendant on July 2, 2024, by serving Colleen Banahan, a person within the Corporation Division of the New York Department of State, authorized to accept service on behalf of Defendant. A copy of the Affidavit of Service is attached hereto as **Exhibit M**.

6. On July 2, 2024, Ms. Abigail Frankel, a paralegal with the firm representing Plaintiffs in this action, Virginia & Ambinder, LLP (“V&A”), provided Defendant with a copy of the Summons, Complaint, and Litigation Hold Notice via both certified mail and electronic mail. A copy of the Affidavit of Service is attached hereto as **Exhibit N**.

7. Defendant failed to file an answer or otherwise defend this action and its time to do so has expired, placing Defendant in default pursuant to Rule 55 of the Federal Rules of Civil Procedure.

8. Defendant is not an infant or an incompetent.

9. On August 1, 2024, the Clerk of the Court issued a certificate of default in this matter certifying that Defendant had been properly served and no answer had been filed. A copy of the Certificate of Default is annexed hereto as **Exhibit O**.

10. To date, Defendant has failed to answer or appear or move with respect to the Complaint and the time to do so has expired.

Billing Rates and Time Records

11. Copies of V&A’s contemporaneous time records, reflecting all time spent and all activities performed in the litigation of this action are attached hereto as **Exhibit P**. Copies of the

service of process invoice and the relevant USPS postage rates are collectively attached hereto as **Exhibit Q**.

12. I, Adrianna R. Grancio (“AG” in the accompanying billing records), am a 2016 graduate of St. John’s University School of Law, and a partner at V&A. Since graduating law school and being admitted to the New York State bar, I have handled the prosecution of several ERISA collections actions. V&A billed my time at a rate of \$333 per hour for work performed in connection with this action. *See* Ex. P.

13. V&A billed its legal assistants’¹ time at a rate of \$132 per hour for work performed in connection with this matter. *See id.*

14. All of the above-referenced rates are the result of negotiations between V&A and the Funds regarding the proper hourly rates to compensate V&A’s attorneys and legal assistants for their services.

15. V&A’s total billings in this matter amount to \$3,060.60, reflecting 10.7 hours of work. *See* Ex. P.

16. Accordingly, the Funds are entitled to the reasonable legal fees in this action of \$3,060.60 pursuant to the relevant collective bargaining agreement and ERISA § 502(g). *Id.*

17. In addition, the Funds have incurred \$490.20 in costs and expenses advanced by V&A in connection with this matter. *Id.*; Ex. Q. The court fees, postage fees, research fees, and service fees of \$490.20 incurred in this action are recoverable under ERISA § 502(g)(2)(D).

18. For the foregoing reasons, I respectfully request that this Court enter the annexed Default Judgment against Defendant pursuant to Fed. R. Civ. P. 55, awarding Plaintiffs damages in the amount of at least \$76,087.65, consisting of:

¹ Eva Keating (“EK” in the accompanying billing records) and Abigail Frankel (“AF” in the accompanying billing records).

- a. Delinquent contributions of \$36,128.40, union assessments of \$2,184, and dues check-offs of \$1,083.10 for the period of January 8, 2020 through June 30, 2023, interest thereon of at the annual rate of ten percent (10%) for a total of \$15,172.12, liquidated damages in the amount of ten percent (10%) of the delinquent contributions for a total of \$3,612.84, and audit costs of \$1,805;
 - b. Estimated contributions of \$10,362.56 and estimated union assessments of \$488.80 for the period March through April 2024, interest thereon of at the annual rate of ten percent (10%) for a total of \$224.36, and liquidated damages in the amount of ten percent (10%) of the estimated delinquent contributions for a total of \$1,036.26;
 - c. Late payment interest of \$439.41, for the periods February 2023, April 2023, July and August 2023, and October 2023 through January 2024;
 - d. Additional interest on the delinquent contributions contained in the Audit and estimated contributions owed for March and April 2024, calculated at the rate set forth in the CBA and Collection Policy from August 8, 2024 through the date of judgment;
 - e. Attorneys' fees and expenses of \$3,550.80;
 - f. Post-judgment interest calculated at the statutory rate; and
 - g. Any other relief the Court finds just and proper.
19. A summary of damages is annexed hereto as **Exhibit R**.
20. A proposed judgment is annexed hereto as **Exhibit S**.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 13, 2024

/s/ Adrianna R. Grancio
Adrianna R. Grancio, Esq.